



DEPARTMENT OF LABOR

Employment and Training Administration

TA-W-72,673

WEATHER SHIELD MANUFACTURING, INC.
CORPORATE OFFICE
MEDFORD, WISCONSIN

Notice of Negative Determination
On Remand

On August 3, 2011, the United States Court of International Trade (USCIT) granted the Department of Labor's request for voluntary remand to conduct further investigation and to submit a new administrative record in Former Employees of Weather Shield Manufacturing, Inc. v. United States Secretary of Labor (Court No. 10-00299) that contains information obtained during both the previous investigations and the latest investigation of this matter.

On July 16, 2010, the Department of Labor (Department) issued a Negative Determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Weather Shield Manufacturing, Inc., Corporate Office, Medford, Wisconsin (subject facility). AR 598. Workers at the subject facility (subject worker group) supply administrative support services related to the production of doors and windows which takes place at various domestic locations of Weather Shield Manufacturing, Inc. (subject firm). The Department's notice of determination was published in the Federal Register on August 2, 2010 (75 FR 45163). AR 611.

Background - Petition TA-W-64,725

On December 17, 2008, workers filed a petition for TAA and Alternative Trade Adjustment Assistance (ATAA) on behalf of workers and former workers of Weather Shield Manufacturing, Inc., Corporate Office, Medford, Wisconsin (petition TA-W-64,725 - hereafter referred to as *Weather Shield I*). AR 1, 4, 6.

The Department determined in the initial and reconsideration investigations in *Weather Shield I* that the subject firm did not shift production to a foreign country and that imports of articles like or directly competitive with those produced by the subject firm did not contribute importantly to worker separations at the subject facility. AR 17, 27, 69, 75. A sample survey of the subject firm's declining customers conducted both in the initial and administrative reconsideration investigations revealed negligible imports of products like or directly competitive with those produced by workers at the subject firm. AR 42, 44, 45, 51, 54, 64, 69, 104, 105.

On January 19, 2010, Plaintiffs filed a complaint with the USCIT in which they alleged that their separations were attributable to increased customer imports. In order to conduct a further investigation to address Plaintiff allegations, the Department requested a voluntary remand. During that remand investigation, the Department obtained a list of all the customers of the subject firm (AR 145) and conducted a larger sample customer survey to determine whether or not there were

increased customer imports during the relevant time period (calendar years 2007 and 2008) of articles like or directly competitive with doors and/or windows. AR 279-530. The survey revealed that customer imports had increased during the relevant time period. AR 1345.

Accordingly, the Department issued a Revised Determination on Remand on August 9, 2010, applicable to workers at the subject facility who became totally or partially separated from employment on or after December 17, 2007, through August 9, 2012, which granted certification of eligibility to apply for TAA and ATAA benefits. Under the Department's practice, certifications typically cover workers separated on or after the impact date, as defined in 29 CFR 90.2, and ending at the expiration of the two year period following the determination. Therefore, the *Weather Shield I* certification covered workers separated in the year preceding the date of the petition and continued for two years after the date of certification. The Department's Notice of Revised Determination on Remand was published in the Federal Register on August 23, 2010 (75 FR 51851). AR 1436.

Initial investigation - Petition TA-W-72,673

On October 23, 2009, workers filed a petition for TAA on behalf of workers and former workers of Weather Shield Manufacturing, Inc., Corporate Office, Medford, Wisconsin (petition TA-W-72,673 - hereafter referred to as *Weather Shield II*). AR 534, 539. The petitioners in *Weather Shield II* stated on the petition

that worker separations were due to "the economy" and that the subject firm operated several domestic facilities and sought certification under the expanded certification requirements for TAA under the TAA program as amended by the Trade and Globalization Act Adjustment Assistance Act of 2009 which provided a higher level of benefits for certified workers.

During the investigation of the *Weather Shield II* petition, the subject firm confirmed that a significant number or proportion of the workers at the subject facility had been totally or partially separated from employment, or threatened with such separation. AR 585, 593. According to the subject firm, the separations were due to the collapse of the domestic housing market and the corresponding decreased demand for windows and doors used in residential units. AR 585, 593, 594.

The investigation also revealed that there was not a shift to or acquisition from a foreign country by the subject firm in the supply of services like or directly competitive with the administrative support services supplied by the subject worker group. AR 585, 593, 594. Therefore, the Department proceeded with a customer survey to determine if the worker separations were attributable to increased imports.

The Department surveyed the subject firm's major declining customers regarding their purchases of doors and/or windows in the relevant period. AR 562-584. The survey revealed that customer imports of articles like or directly competitive with

those produced by the subject firm declined in the relevant period, both in absolute terms and relative to the purchases made from the subject firm. AR 587. The Department determined that, for the relevant period of the *Weather Shield II* petition, the separations in the subject worker group were not related to an increase in imports.

The customers selected for the survey were chosen based on the complete customer list obtained in the investigation of *Weather Shield I* and the results of the customer surveys conducted during that investigation. AR 145. Reviewing information already on record enabled the Department to select a representative sample of customers, the data of which was sufficient to reach the initial determination on the petition. Selecting which customers to survey based on the survey results collected in *Weather Shield I* provided more clarity regarding the approximate size of the surveyed customers as the size of each customer was not specified by the subject firm. AR 145, 279-530, 1345.

In addition, data collected on U.S. aggregate imports of articles like or directly competitive with those produced by the subject firm showed a decline between 2008 and 2009. AR 591, 592.

Based on this information, the Department issued a negative determination on July 16, 2010. The Department's Notice of Negative Determination was published in the Federal Register on August 2, 2010 (75 FR 45163). AR 611.

Reconsideration investigation - Petition TA-W-72,673

By application dated August 23, 2010, a petitioner requested administrative reconsideration on the Department's negative determination. AR 612, 620, 627, 635, 642. In the application, the petitioner stated that the factual circumstances in TA-W-72,673 are the same as in petition TA-W-64,725 and that the current petition should therefore also be certified.

Because the petitioner did not supply facts not previously considered, provide documentation to show that the determination was erroneous, or show that there was a misinterpretation of facts or the law, the Department determined that administrative reconsideration could not be granted, in accordance with 29 CFR 90.18(c), and issued a Notice of Negative Determination Regarding Application for Reconsideration for the subject worker group on September 10, 2010. AR 649.

The Department explained that because the petition date of TA-W-64,725 is December 17, 2008 and the petition date of TA-W-72,673 is October 23, 2009, the investigation periods in the two cases are different and that the findings in TA-W-64,725 cannot be used as the basis for certification of TA-W-72,673. The Department's Notice of Negative Determination Regarding Application for Reconsideration was published in the Federal Register on September 21, 2010 (75 FR 57519). AR 653.

Remand investigation - Petition TA-W-72,673

The petitioners then filed a complaint with the USCIT on October 8, 2010, and argued the same allegations as in their

request for administrative reconsideration. The Department determined that further investigation under judicial review was not justified, for the same reasons that the application for administrative reconsideration was not granted, and filed an administrative record that consisted of the materials upon which the Department relied in making its determination with regards to the subject worker group's eligibility to apply for TAA.

In Plaintiffs' Motion to Supplement the Administrative Record, dated March 30, 2011, Plaintiffs indicated that the administrative record did not include documentation that adequately supported the negative determination. Specifically, the Plaintiffs pointed to TAA certifications of other door and window manufacturers, and provided lists of the "Top 100 Window Manufacturers" and of door and window dealers with which the subject firm competed. In addition, the Plaintiffs indicated that the record was missing material that was collected in the *Weather Shield I* initial and remand investigations and that was considered in the *Weather Shield II* investigation.

On May 2, 2011, the Department filed a Motion for Voluntary Remand in which it sought to supplement the administrative record with material that was received during the investigation of *Weather Shield I* and to provide a thorough explanation as to how it relied on the omitted documents to make its determination.

The Department amended the administrative record on June 3, 2011 to include documents from the *Weather Shield I* initial and

remand investigations that supported the determination in *Weather Shield II*. Namely, the Department added to the record the customer surveys received during the remand investigation; the complete customer list obtained during the remand investigation; the "Non-Production Questionnaire" (OMB No. 1205-0447) and "Confidential Data Request" forms (OMB No. 1205-0342) received during the initial investigation; email correspondence in which the subject firm provided to the Department sales figures during the remand investigation; and the Department's investigative report from the initial investigation. AR 655, 657, 662, 667, 673, 675. The Department also supplemented the record with an explanation regarding the relevance of these documents. AR 740.

The record shows that while the subject worker group covered by *Weather Shield I* is the same as the subject worker group covered by *Weather Shield II*, the investigations of the subject worker group cover different time periods. In *Weather Shield I*, the petition date is December 18, 2008, making the relevant period calendar year 2008 and the representative base period calendar year 2007. In *Weather Shield II*, the petition date is October 23, 2009, making the relevant period October 2008 through September 2009 and the representative base period October 2007 through September 2008.

This distinction is important in that 29 CFR 90.2 states that "Increased imports means that imports have increased either absolutely or relative to domestic production compared to a representative base period. The representative base period shall

be one year consisting of the four quarters immediately preceding the date which is the twelve month prior to the date of the petition." (Emphasis added).

The remand investigation of *Weather Shield I* and the initial investigation of *Weather Shield II* were conducted concurrently because the USCIT complaint in *Weather Shield I* was filed on January 19, 2010, approximately two and half months after the petition to the Department for *Weather Shield II* was filed on October 23, 2009. AR 534. AR Therefore, the Department used some of the documents already in its possession that were obtained in the initial and remand investigations of *Weather Shield I* in determining whether the subject worker group covered under the *Weather Shield II* petition met the eligibility criteria for certification. AR 655, 657, 662, 667, 673, 675.

Because of the different relevant time periods for each investigation, the Department considered only information that could not have changed from one set of time periods to the next. For example, in order to determine whether subject firm sales had declined, the Department collected from the subject firm sales data for calendar 2009, which was compared to the 2008 data already on record. Similarly, as explained above, the Department used the complete customer list obtained during the course of the *Weather Shield I* remand investigation to conduct the survey in *Weather Shield II*. The Department's Notice of Amended Negative Determination was published in the Federal Register on June 15,

2011 (76 FR 35026). AR 1438.

On July 5, 2011, the Plaintiffs filed a Memorandum of Points and Authorities in Support of Plaintiffs' Amended Motion for Judgment on the Agency Record in which they asked the Department to conduct further investigation and apply the same methodology as in the *Weather Shield I* remand investigation in regards to administering customer surveys and determining import competition.

On August 3, 2011, the Department requested a voluntary remand to complete the administrative record with all the contents of *Weather Shield I*, to reopen the case to conduct further investigation, and to permit the Plaintiffs to submit evidence.

On September 2, 2011, the Plaintiffs submitted additional information in support of their claims. AR 1023, 1114. In their letter, the Plaintiffs reiterated the allegations supplied in the October 8, 2010 USCIT complaint, the March 30, 2011 Motion, and the July 5, 2011 Memorandum and provided information to show an overlap between Weather Shield's customers and those of other domestic firms that allegedly import from foreign countries articles like or directly competitive with doors and/or windows. AR 1023, 1114. The Plaintiffs alleged that the subject firm competed with other U.S. window and door manufacturers, to the workers of which the Department granted TAA certifications, and pointed to possible import competition between the subject firm

and its competitors. AR 1023, 1114.

The Plaintiffs stated that the Department should 1. expand the record to include data from additional customers by conducting more surveys, including surveying all the same customers that were identified in the *Weather Shield I* remand; 2. show that the surveyed customers account for a significant percentage of the subject firm's sales decline; 3. collect additional information from one of the customers that was surveyed in the initial investigation regarding the information reported on the survey in order to determine whether this customer's purchases from other domestic firms were imported or domestic, and establish that the decline in sales to this customer by the subject firm was not attributable to an increase in imports; 4. take into consideration the TAA certifications of alleged competitors Jeld-Wen Premium Doors, Springs Window Fashions, Woodgrain Millworks, and Simpson Door Company and how the activities of these firms could have created import competition for the subject firm; 5. examine the competition that occurs between the "Top 100 Window Manufacturers" and look for overlapping customers between Weather Shield and its competitors, especially those that employed TAA certified worker groups. AR 1023, 1114.

The *Weather Shield I* petition was filed under the Trade Adjustment Assistance Reform Act of 2002 requirements for TAA certification whereas the *Weather Shield II* petition was filed

under the Trade and Globalization Adjustment Assistance Act of 2009 requirements. Under the 2009 amendments, the group eligibility requirements for workers of a Firm under Section 222(a) of the Act, 19 U.S.C. § 2272(a), can be satisfied if the following criteria are met:

(1) a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) (A) (i) the sales or production, or both, of such firm have decreased absolutely;

(ii) (I) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(II) imports of articles like or directly competitive with articles—

(aa) into which one or more component parts produced by such firm are directly incorporated, or

(bb) which are produced directly using services supplied by such firm, have increased; or

(III) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased; and

(iii) the increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

(B) (i) (I) there has been a shift by such workers' firm to a foreign country in the production of articles or the supply of services like or directly competitive with articles which are produced or services which are supplied by such firm; or

(II) such workers' firm has acquired from a foreign country articles or services that are like or directly competitive with articles which are

produced or services which are supplied by such firm; and

(ii) the shift described in clause (i)(I) or the acquisition of articles or services described in clause (i)(II) contributed importantly to such workers' separation or threat of separation.

Pursuant to the August 3, 2011 remand, the Department collected additional information from the subject firm and the Plaintiffs, conducted an expanded customer survey, and collected aggregate U.S. import data pertaining to articles like or directly competitive with those produced at the subject firm.

The Department also confirmed previously collected information from the subject firm which revealed updated information regarding the shutdown of production facilities and sales figures during the relevant period. The corrected information revealed that the subject firm production facilities in Park Falls, Wisconsin, Ladysmith, Wisconsin, and Medford, Wisconsin had not shut down production in early 2009, as previously stated by the subject firm in the initial investigation of *Weather Shield I*. AR 779.

Additionally, the new information revealed that sales of the subject firm increased in the relevant time period. AR 812. Nonetheless, the Department conducted a customer survey to determine whether possible declines in production at the subject firm had been caused by an increase in import competition. AR 823-990, 1243-1324, 1325-1344.

The Department surveyed a total of 16 of the subject firm's customers regarding their purchases of doors and/or windows in 2008 and 2009. AR 823-996, 1254-1312, 1326-1341. The survey selection was based on information provided by the subject firm pertaining to its top customers during the relevant time period. AR 145, 785. The survey also included the three customers that were surveyed in the initial investigation of *Weather Shield II*. AR 823, 1243, 1313-1324, 1325, 1342, 1343.

The data collected from the 19 surveyed customers demonstrated that imports declined at a much faster rate than purchases made from the subject firm and other domestic firms between 2009 and the representative base period. AR 1344. Although purchases from the subject firm by these customers declined, because overall subject firm sales increased in the relevant time period, these customers did not account for any sales declines at the subject firm. AR 1344.

The Department collected U.S. aggregate import data of *wood window and door manufacturing* (NAICS 321911) and *metal window and door manufacturing* (NAICS 332321) which showed an overall decrease in imports. The first group of data for wood window and door manufacturing shows a decline of 36 percent from 2008 to 2009 (imports only) and 10 percent (imports to shipments) in the relevant time period. The second group of data for metal window and door manufacturing shows a decline of 34 percent (imports only) and nine percent (imports to shipments) in the relevant

time period. AR 1346.

The Plaintiffs also asked the Department to determine whether the subject firm may have competed with imported doors and/or windows of other domestic suppliers of a specific customer of the subject firm that was surveyed in the initial investigation. AR 1023, 1114. The Department solicited information from this customer regarding the origin of the products it purchases from other domestic firms. AR 823-852, 997. The customer explained that it does not track import information on products purchased from domestic suppliers. AR 823-852. The Department conducted further investigation regarding the domestic suppliers of this customer to determine if any of the suppliers employed workers that had been certified eligible for TAA benefits in the relevant time period. AR 998. The investigation revealed that this customer had one supplier that sold products like or directly competitive with those produced by the subject firm whose workers had been certified eligible for TAA. AR 998.

The Department also conducted a search to reveal how many of the firms on the "Top 100 Window Manufacturers" list provided by the Plaintiffs employed worker groups that were certified for TAA in the relevant time period. AR 1354. The search revealed that only six firms (nine locations total) employed worker groups that had been certified eligible to apply for TAA. AR 1354. Out of the nine locations, the workers of two locations received TAA certifications due to increased imports during the relevant time

period (Jeld-Wen Premium Doors, Oshwosh, WI, TA-W-71,644; certified for TAA on July 21, 2009 and Woodgrain Millworks, Inc., Nampa, ID, TA-W-63,263; certified for TAA on May 9, 2009). AR 1354. Two certifications were granted based on shifts in production abroad, three for increased imports that took place prior to the relevant time period of this investigation, one for imports of an article not like or directly competitive with the articles produced at the subject firm, and one on secondary basis. AR 1354.

For each of the two cases above that received a TAA certification, Jeld-Wen Premium Doors and Woodgrain Millworks, Inc., the Department compared the customer lists provided by each of these firms to that provided by the subject firm. The comparison revealed that these alleged competitors and the subject firm do not have any customers in common. AR 1363-1431. Therefore, the Department could not verify the Plaintiffs' claim that the subject firm and the alleged competitors directly competed in the same markets and had no basis for finding that these firms competed in the same market area.

Additionally, the Department contacted an alleged competitor of the subject firm, Simpson Door Company, to confirm the Plaintiffs' claims that this firm shut down domestic operations due to increased import competition. AR 1431A. According to the information provided, this firm has not ceased domestic production of doors and/or windows. AR 1431A. The Department

also collected information regarding this firm's major domestic customers. AR 1431A. After comparing the customer list to that provided by the subject firm, it was revealed that the two firms only have one customer in common where articles from the two firms competed directly. AR 1431A. Therefore, the Plaintiffs' claim that the subject firm competed with Simpson Door Company's imported products during the relevant time period is not justified.

Additionally, the investigation revealed that although workers at Springs Window Fashions, LLC, Montgomery, PA (TA-W-62,704) were certified for TAA in the relevant time period, this firm does not produce articles like or directly competitive with those produced at the subject firm so it could not have posed competition. AR 1350.

Based on a careful review of previously submitted information and new information obtained during the remand investigation, the Department finds that worker separations at the subject firm were not caused by an increased reliance on imports of articles like or directly competitive with those produced by the subject firm. Therefore, the Department reaffirms that the petitioning workers have not met the eligibility criteria of Section 222(c) of the Trade Act of 1974, as amended.

Conclusion

After careful reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker

adjustment assistance for workers and former workers of Weather
Shield Manufacturing, Inc., Corporate Office, Medford,
Wisconsin.

Signed in Washington, D.C., on this 31st day of October, 2011

/s/ Elliott S. Kushner

ELLIOTT S. KUSHNER
Certifying Officer, Office of
Trade Adjustment Assistance

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